

STATE OF MICHIGAN
COURT OF APPEALS

In re M. M. CHIVERS, Minor.

UNPUBLISHED
November 13, 2014

Nos. 320737 & 320738
Wayne Circuit Court
Family Division
LC No. 01-400993-NA

Before: WHITBECK, P.J., and FITZGERALD and MURRAY, JJ.

PER CURIAM.

In Docket No. 320737, respondent-mother, E. Nash-Chivers, appeals as of right the trial court's order terminating her parental rights to the minor child. In Docket No. 320738, respondent-father, H. Chivers, appeals as of right the trial court's order terminating his parental rights to the minor child. We affirm.

I. FACTS

A. THE CHILD'S REMOVAL

The trial court removed the child from the respondents' care shortly after her birth in June 2011 because she tested positive for cocaine, and respondents' parental rights to their other children had been terminated. At the adjudication, Nash-Chivers admitted that her parental rights to five children had been terminated and Chivers admitted that his parental rights to two children had been terminated. Both respondents admitted that they were participating in a drug rehabilitation program. The trial court placed the child with a paternal cousin. The Department of Human Services (the Department) petitioned for immediate termination of the respondents' parental rights.

Following a termination hearing in October 2011, the parties agreed that statutory grounds supported terminating both parents' parental rights. However, the respondents' attorneys, the Department's attorney, and the child's guardian ad litem asked the trial court to give the respondents the opportunity to participate in a service plan. The trial court found that terminating the respondents' parental rights was not in the child's best interests. It ordered Nash-Chivers and Chivers to participate in a service plan, which required them to attend drug screens, participate in substance abuse treatment, attend narcotics anonymous (NA) or alcoholics anonymous (AA) meetings twice a week, participate in parenting, job training, and General Educational Development (GED) classes, and visit the child regularly.

B. PARENTAL PROGRESS

Nash-Chivers tested positive for cocaine in November and December 2011. Nash-Chivers stated that she was committed to treatment, was attending NA meetings, and had a sponsor. Chivers tested positive for alcohol twice in December 2011. Chivers also stated that he was attending AA and NA meetings and had a sponsor.

At the dispositional review in April 2012, the Department reported that the respondents were doing well with their treatment plan, attending GED classes, job training, AA and NA meetings, and participating in substance abuse treatment. Chivers tested negative at all of his drug screens, but Nash-Chivers tested positive for cocaine in April 2012.

By July 2012, both parents had completed their substance abuse programs. Chivers continued to test negative on drug screens, but Nash-Chivers tested positive for cocaine in June 2012. Nash-Chivers's NA sponsor told the Department that she had not heard from Nash-Chivers in two months or seen her at any NA meetings. At the October 2012 review hearing, the Department reported that Nash-Chivers had not completed any drug screens and Department employees reported smelling alcohol on Chivers a few times. The trial court ordered the Department to petition to terminate the respondents' parental rights.

Nash-Chivers continued to test positive for cocaine into April 2013. The Department reported that Chivers's drug screening organization indicated that Chivers missed many drug screens, but Chivers had receipts indicating that he appeared on some days. By the July 2013 review hearing, Nash-Chivers had tested positive for cocaine again and had missed 30 drug screens. Chivers had missed 27 drug screens and tested positive for cocaine in May 2013. Neither respondent appeared at the October 2013 review hearing. The Department reported that neither respondent had appeared for a drug screen since April 2013 and had missed five parenting visits between July and October 2013.

C. THE TERMINATION HEARING

At the termination hearing, the child's foster mother testified that she had cared for the child since she was 12 days old; the child was two-and-a-half years old at the time of the hearing. The child's foster mother described her as happy and energetic. According to the foster mother, the respondents' parenting visits "fell off" in August 2013. The child's foster mother testified that the child loved the respondents. The child's foster mother testified that she was not willing to become the child's legal guardian and preferred to adopt the child.

Chivers testified that his and Nash-Chivers's parental rights to two children had been terminated and that a maternal cousin had custody of those children. Brian Brown, the child's foster care specialist, testified that Chivers and Nash-Chivers had not benefitted from services, missed parenting time visits, and had substance abuse issues. Brown testified that Nash-Chivers continued to test positive for cocaine and Chivers continued to test positive for alcohol. Brown testified that neither respondent had completed a drug screen since August 19, 2013. Chivers testified that he called Brown to ask whether he was supposed to drug screen on a particular day, and sometimes Brown did not answer or call back.

Brown testified that Nash-Chivers missed 12 parenting visits and Chivers missed 11 parenting visits between June 2011 and July 2013. Brown testified that the respondents gave him notice that they could not attend some parenting visits because they were at the hospital. Brown also testified that he had smelled alcohol on Chivers's breath at one parenting visit.

D. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court found that clear and convincing evidence supported terminating Chiver's and Nash-Chiver's parental rights under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), (i) (parental rights to another child terminated for serious neglect), (j) (likelihood of harm if the child is returned to the parent), and (l) (parental rights to another child involuntarily terminated). The trial court also found that terminating the respondents' parental rights was in the child's best interests.

The trial court found that the respondents had failed to comply with and benefit from their treatment plans and had not addressed their substance abuse issues. The trial court noted that the respondents had missed or tested positive for many drug screens, had missed parenting visits, and did not have suitable housing or a source of income. The trial court found that their "continued dysfunctional behavior and failure to adequately address and correct the conditions that caused the child to be placed show[s] a continuing pattern of neglect and . . . a substantial danger to the health and well-being of [the child]."

The trial court found that the child had been in care for 30 months. It found that the child was being cared for by a relative who was willing to adopt the child. The trial court found that the child needed and deserved a safe and stable home, and that the foster parent would provide the child with a safe and stable home. Accordingly, the trial court ordered termination of the respondents' parental rights.

II. REASONABLE EFFORTS (DOCKET NO. 320737)

A. STANDARD OF REVIEW

We review for clear error whether a trial court engaged in reasonable efforts to reunify a child with his or her parent.¹ A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake.² The time for a parent to challenge a service plan is when the trial court initially adopts it.³

¹ *In re Mason*, 486 Mich 142, 152, 166; 782 NW2d 747 (2010).

² *Id.* at 152.

³ *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000).

B. LEGAL STANDARDS

A parent has a fundamental liberty interest in the care and custody of his or her children under the Fourteenth Amendment of the United States Constitution.⁴ The trial court must make reasonable efforts to reunify a child with his or her family unless aggravating circumstances are present.⁵ However, “there exists a commensurate responsibility on the part of [parents] to participate in the services that are offered.”⁶

C. APPLYING THE STANDARDS

Nash-Chivers contends that the trial court clearly erred when it found that the Department engaged in reasonable efforts to reunify her with the child. The Department contends that Nash-Chivers’s challenge to the reasonableness of the trial court’s effort is not timely. We agree with the Department.

Here, Nash-Chivers challenges the reasonableness of the trial court’s efforts to reunify her with the child for the first time on appeal. If a parent’s challenge to the reasonableness of the trial court’s efforts to reunify the parent with a child is not timely when the parent raises it at the termination hearing,⁷ the parent’s challenge is certainly not timely when the parent raises the issue for the first time on appeal.

Further, we note that the record does not support Nash-Chivers’s claim that the Department did not engage in reasonable efforts to reunify her with the child. Here, the Department provided Nash-Chivers with a variety of services: drug screening, substance abuse counseling, AA and NA meetings, parenting classes, GED classes, and job training. Nash-Chivers simply failed to take advantage of those services.

We conclude that Nash-Chivers’s challenge to the reasonableness of the Department’s efforts is not timely and that the trial court did not clearly err when it found that the Department engaged in reasonable efforts to reunify Nash-Chivers with the child.

III. STATUTORY GROUNDS (DOCKET NO. 320738)

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.⁸ A finding is clearly erroneous if, after

⁴ *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

⁵ MCL 712A.19a(2).

⁶ *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

⁷ See *Terry*, 240 Mich App at 27.

⁸ MCR 3.977(K); *Mason*, 486 Mich at 152.

reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake.⁹ The burden is on the Department to prove at least one of these statutory grounds by clear and convincing evidence.¹⁰ The trial court need only find a single statutory ground to terminate a parent's parental rights.¹¹

B. LEGAL STANDARDS

MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent's rights if "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." This statutory ground exists when the conditions that brought the children into foster care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services."¹²

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody.¹³

MCL 712A.19b(3)(i) provides that the trial court may terminate a parent's rights if

[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

⁹ *Mason*, 486 Mich at 152.

¹⁰ MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

¹¹ *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

¹² See *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000); *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

¹³ *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

A parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home.¹⁴

Finally, MCL 712A.19b(3)(l) provides that the trial court may terminate a parent's rights if "[t]he parent's rights to another child were terminated as a result of proceedings under . . . this chapter or a similar law of another state."

C. APPLYING THE STANDARDS

Chivers contends that the trial court clearly erred when it found that statutory grounds supported terminating his parental rights. However, Chivers and Chivers' attorney admitted that the statutory grounds supported terminating Chivers's parental rights at the outset of this proceeding, and Chivers admitted that his rights to two of his children were involuntarily terminated. Accordingly, termination was appropriate under MCL 712A.19b(3)(l) and Chivers's argument on appeal is entirely without merit.

Further, the trial court's findings regarding the other statutory grounds were not clearly erroneous. The evidence in this case was that Chivers admitted that he had an alcohol problem, he failed to regularly and consistently attend drug screens, and he arrived at a parental visitation smelling of alcohol. Chivers participation in services in this case began to decline in October 2012 and entirely dropped off by the time of the termination hearing. We conclude that the trial court did not clearly err when it found that Chivers's failure to participate in and benefit from the service plan supported terminating his parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

IV. THE CHILD'S BEST INTERESTS (DOCKET NO. 320737)

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests.¹⁵ We review for clear error the trial court's best interests finding.¹⁶

B. LEGAL STANDARDS

The trial court should weigh all the evidence available to determine the children's best interests.¹⁷ The court should consider a wide variety of factors, which may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and

¹⁴ MCL 712A.19a(5). See *Trejo*, 462 Mich at 362-363; *White*, 303 Mich App at 710.

¹⁵ MCL 712A.19b(5); *Olive/Metts Minors*, 297 Mich App at 40; *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

¹⁶ MCR 3.977(K); *Trejo*, 462 Mich at, 355-356.

¹⁷ *Trejo*, 462 Mich at 356-357.

finality, and the advantages of a foster home over the parent's home.”¹⁸ The trial court may also consider the parent's compliance with his or her case service plan and the possibility of adoption.¹⁹ Though the trial court may not consider the advantage of a foster home in determining whether it has statutory grounds to terminate a parent's parental rights, the trial court may consider the advantages of a foster home when determining the child's best interests.²⁰

C. APPLYING THE STANDARDS

Chivers contends that the trial court clearly erred when it found that termination was in the child's best interests because the child loved Chivers and the trial court did not consider the fact that she was placed with a relative. We disagree.

First, the record does not support Chivers's contention that the trial court did not consider the child's placement with a relative when determining her best interests. The trial court did in fact consider that the child was placed with a relative.

Second, the trial court considered a variety of factors when determining that termination was in the child's best interests. The trial court considered Chivers's history of drug abuse, dysfunctional behavior, and pattern of neglecting children. It found that the child deserved a stable environment—one that Chivers could not provide, but which the child's foster parents could. The trial court found that the foster parents wanted to adopt the child.

Here, Chivers's conduct throughout the case, including his failure to comply with his service plan, demonstrated that he could not meet his minimum parental responsibilities. Brown's and the foster parent's testimonies about the child's living situation and needs also supported the trial court's findings. Given the record in this case, we are not definitely and firmly convinced that the trial court made a mistake when it found that terminating Chivers's parental rights was in the child's best interests.

V. CONCLUSION

In Docket No. 320737, we conclude that the trial court did not clearly err when it found that the Department engaged in reasonable efforts to reunify the child with Nash-Chivers. In Docket No. 320738, we conclude that the trial court did not clearly err when it found that statutory grounds supported terminating Chivers's parental rights and that termination was in the child's best interests.

¹⁸ *Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

¹⁹ *White*, 303 Mich App at 714.

²⁰ *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

We affirm.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray